

N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>VICKY J. STEPHENSON,</b>	)	
	)	<b>Charge No. 2006CN3521</b>
<b>Complainant,</b>	)	<b>EEOC No. N/A</b>
	)	<b>ALS No. 07-260</b>
<b>and</b>	)	
	)	
<b>VAN-DEE MANUFACTURING CO.,</b>	)	
<b>INC.,</b>	)	
	)	<b>Judge Reva S. Bauch</b>
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

This matter comes before the Commission on Respondent's Motion for Summary Decision ("Motion"). Complainant filed a Response. Respondent filed a Reply. Accordingly, this matter is now ripe for a decision.

**Findings of Fact**

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility determinations. All evidence was viewed in the light most favorable to Complainant. Facts not stated herein are not deemed material.

1. On April 5, 2007, Complainant filed a Complaint alleging race and age discrimination, as well as retaliation.
2. Complainant is a Caucasian female.
3. Complainant was 51 years old at the time of the alleged discrimination.
4. Respondent is a manufacturer of precision screw machine products with its facilities in Batavia, Illinois.

5. Respondent makes parts out of steel, based on customers' blueprints, to be used in connection with ball bearings.
6. Complainant was hired in 1987 to work as a semi-skilled machine operator, a position she held until the day of her discharge in February 2006.
7. Complainant's behavior and attitude began to change in late November of 2004.
8. Complainant became enraged and verbally assaulted her co-worker, Mr. Cherry, for driving Complainant's nephew, also a co-worker, to work.
9. Complainant's supervisor warned her about her abusive comments.
10. Thereafter, Complainant spent significant time during the working hours making notes to herself about the activities of other employees and talking out loud to no one in particular about how other employees were goofing off.
11. Complainant was observed taking notes about when, how frequently and how long employees used the restroom, and how long employees talked to each other.
12. Complainant was told to stop wasting her time taking notes of other employee's conduct and to focus on doing her job.
13. Complainant also responded negatively when her long-time supervisor retired in July 2005.
14. Complainant did not like the newly-appointed supervisor.
15. On July 20, 2005, the new supervisor asked Complainant to move some empty pans from her machine to the back of the building where they were needed.
16. Moving pans was not an uncommon request.
17. Complainant refused to move the pans.
18. On July 21, 2005, the supervisor, along with Respondent's personnel manager and other supervisors, met with Complainant in the company's offices to discuss her insubordination.

19. Complainant was given a written warning for failing to obey her supervisor's instructions to move the pans.
20. At that meeting, Complainant was also told again to stop taking notes about other employee's work habits and to focus on her job.
21. Complainant refused to sign the written warning.
22. On February 24, 2006, Respondent learned that Complainant was threatening to bring a gun to work and shoot other employees.
23. Respondent prepared a report of the gun incident.
24. Several of Complainant's co-workers confirmed to Respondent's management that they had heard Complainant's threats to shoot them.
25. Several of Complainant's co-worker also confirmed that Complainant collected and had access to guns.
26. Complainant's threats made her co-workers fear for their lives.
27. On February 24, 2006, Respondent's management called Complainant into one of the offices and told her she was being called in because she had been insubordinate before and that she was now threatening other employees.
28. Complainant was told she was terminated.
29. Complainant's supervisor and another manager helped Complainant gather her things and escorted her out of the building.
30. Respondent then reported the incident to the Batavia Police Department.
31. The Batavia police confirmed that Complainant and her nephew had valid Illinois Firearm Owner's Identification Cards.
32. Several of Complainant's co-workers requested that Respondent keep the plant locked for a week after Complainant was terminated.
33. Respondent requested that the Batavia Police increase its patrol by the plant.

34. Respondent's management circulated a memorandum to its managers addressing Complainant's termination and detailing the safety measures Respondent was implementing as a result of Complainant's threats.

35. While employed at Respondent, Complainant was the highest paid secondary operator.

36. At the time of Complainant's termination, Respondent had 38 hourly employees.

37. Twenty seven (27) of the employees were over 40, and 9 employees were older than Complainant.

38. Respondent's oldest employee on the payroll was 71 years old.

39. Of the 9 secondary operators receiving wage increases in 2005, 7 of them, including Complainant, were over age 40.

40. Prior to the filing of a Charge of Discrimination, Complainant had not complained of any kind of discrimination.

#### **Conclusions of Law**

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-103(B) and 5/2-101(B).

2. Commission has jurisdiction over the parties and the subject matter of this action.

3. Complainant failed to establish a *prima facie* case of race discrimination.

4. Complainant failed to establish a *prima facie* case of age discrimination.

5. Complainant has failed to establish a *prima facie* case of retaliation.

6. Respondent has articulated a legitimate, nondiscriminatory reason for terminating Complainant.

7. Complainant has failed to show that Respondent's reason is a pretext for discrimination.

## Discussion

### *I. Standards for Summary Decision*

Under Section 8-106.1 of Act, either party to a complaint may move for summary decision. **775 ILCS 5/8-106.1**. See also **56 Ill. Admin. Code §5300.735**. A summary decision is the administrative agency procedural analog to the motion for summary judgment in the Code of Civil Procedure. **Cano v. Village of Dolton, 250 Ill App3d 130 (1993)**. Such a motion should be granted when there is no genuine issue of material fact and the undisputed facts entitle the moving party to a recommended order in its favor as a matter of law. **Fitzpatrick v. Human Rights Comm'n, 267 Ill App3d 386 (1994)**. The purpose of a summary judgment is not to be a substitute for trial but, rather, to determine whether a triable issue of fact exists. **Herschner v. Xttrium Lab. Inc., 26 Ill App3d (1969)**. All pleadings, depositions, affidavits, interrogatories and admissions must be strictly construed against the moving party and liberally construed against the nonmoving party. **Kolakowski v. Voris, 76 Ill App3d 453 (1979)**. If the facts are not in dispute, inferences may be drawn from undisputed facts to determine if the movant is entitled to judgment as a matter of law. **Turner v. Roesner, 193 Ill App3d 482 (1990)**. Where the facts are susceptible to two or more inferences, reasonable inferences must be drawn in favor of the nonmoving party. **Purdy County of Illinois v. Transportation Insurance Co., Inc., 209 Ill App3d 519 (1991)**. Although not required to prove his/her case as if at hearing, a nonmoving party must provide *some* factual basis for denying the motion. **Birck v. City of Quincy, 241 Ill App3d 119 (1993)**. Only evidentiary facts, and not mere conclusions of law, should be considered. **Chevrie v. Gruesen, 208 Ill App3d 881 (1991)**. If a respondent supplies sworn facts that, if uncontradicted, warrant judgment in its favor as a matter of law, a complainant may not rest on his/her pleadings to create a genuine issue of material fact. **Fitzpatrick at 392**. Where the moving party's affidavits stand uncontradicted, the facts contained therein must be accepted as true

and, therefore, the failure to oppose a summary judgment motion supported by affidavits by filing counter-affidavits in response is frequently fatal. **Rotzoll v. Overhead Door Corp., 289 Ill App3d 410 (1997)**. Summary decision is a drastic means of resolving litigation and should be granted only if the right of the movant to judgment is clear and free from doubt. **Purtill v. Hess, 111 Ill2d 229 (1986)**.

## II. Preliminary Matters

In resolving the present Motion, I must first determine if two of the affidavits submitted by Respondent should be stricken or disregarded, as urged by Complainant. Complainant states that two of Respondent's supporting affidavits – the Affidavit of Laurel Trakszelis and the Affidavit of Jim Hart – were unsigned when they were submitted to the Commission. However, both of these affidavits were signed at the time Respondent's Motion was filed. Respondent contends that it was an unintentional oversight that the signed affidavits were not submitted at the time its Motion was filed. Respondent's counsel has subsequently provided the Commission and Complainant with signed copies of these two affidavits. Thus, the affidavits will be accepted and considered in determining a ruling on the Motion.

## III. Analysis

There are two main methods to prove an employment discrimination case, direct and indirect. Either one or both may be used. **Sola v. Human Rights Comm'n, 316 Ill App3d 528 (2000)**. Since there is no direct evidence in this case, the indirect analysis will be used. The method of proving a charge of discrimination through indirect means was described in the U.S. Supreme Court case of **McDonnell Douglas Corp. v. Green, 411 US 792 (1973)**, and is well-established.

First, the Complainant must establish a *prima facie* showing of discrimination against her by Respondent. If she does, Respondent must articulate a legitimate, non-discriminatory reason for its actions. If this is done, the Complainant must prove by a

preponderance of the evidence that the articulated reason advanced by the Respondent is a pretext. See **Texas Dep't. of Community Affairs v. Burdine, 450 US 248, 254-55 (1981)**. This method of proof has been adopted by the Commission and approved by the Illinois Supreme Court. **Zaderaka v. Human Rights Comm'n, 131 Ill2d 172 (1989)**.

The issues in this case revolve around race and age discrimination, as well as retaliation. In general, to establish a *prima facie* case of race or age discrimination, Complainant must prove: (1) she is in a protected class; (2) she was meeting Respondent's legitimate performance expectations; (3) Respondent took an adverse action against her; and (4) similarly situated employees outside Complainant's protected class were treated more favorably. See **Interstate Material Corp. v. Human Rights Comm'n, 274 Ill App3d 1014 (1995)** (*prima facie* case for race); **Southern Ill. Clinic, Ltd. v. Human Rights Comm'n, 274 Ill App3d 840 (1995)** (*prima facie* case for age).

To establish a claim for retaliation, the Complainant must show that: (1) she was engaged in a protected activity; (2) her employer committed a material adverse act against her; and (3) a causal nexus existed between the protected activity and the adverse act. **Hoffelt v. IDHR, 367 Ill App3d 628 (2006)**.

I find that Complainant has failed to establish a claim for race or age discrimination, or retaliation. Whether or not Complainant has demonstrated that she can establish a *prima facie* case, however, is not fatal. In its submissions, Respondent articulated a legitimate, non-discriminatory reason for its actions. Once such a reason is articulated, there is no need for a *prima facie* case. Instead, at that point, the decisive issue in the case becomes whether the articulated reason is pretextual. **Clyde and Caterpillar, Inc., 52 Ill. HRC Rep. 8 (1989)**, *aff'd sub nom Clyde v. Human Rights Comm'n, 206 Ill App3d 283 (1990)*.

Respondent's submissions are replete with facts documenting that Complainant was disruptive, acted bizarre, verbally assaulted a co-worker, took notes of co-workers"



time and action, and was insubordinate to her direct supervisor. Most significantly, Complainant had created a disruptive, unsafe work environment by threatening to get her gun and shoot her co-workers. Complainant had been warned to stop taking notes of other employees' actions and focus on her job. In addition, Complainant was given written warnings about her insubordinate attitude toward her direct supervisor. Immediately prior to her termination, several co-workers had reported to Respondent's management that Complainant had announced her intention to bring a gun to work and shoot them. These comments sparked fear in the co-workers, thereby necessitating Complainant's termination.

Complainant's response consists of markings on Respondent's submitted affidavits, as well as markings on other documentation such as the Balavia police report and Complainant's written disciplinary report.<sup>1</sup> Complainant states the affidavits and documents are lies. She makes unsubstantiated assertions regarding her former co-workers, former supervisor, former attorney, and Respondent's counsel in an attempt to cast doubt on Respondent's articulated reason for her termination.

Complainant has failed to raise any factual issue which might suggest that Respondent's articulation is pretextual. Although not required to prove her case as if at hearing, Complainant must provide *some* factual basis for denying the motion. ***Supra, Birck at 123.*** In her response, Complainant provides no evidentiary facts for the Commission to consider.

Respondent submitted the Affidavits of Ron Link, Dan Foelske, Angel Valenauela, Laurel Trakszelis, Merle Koenig, Larry Jeskie, Jim Hart, Paul Puri, and Oscar Plata to support its Motion. Complainant failed to contradict these facts with counter-affidavits. This can be fatal. ***Supra, Rotzoll at 7.*** Complainant may not rest on

---

<sup>1</sup> The Commission's file did not contain the Complainant's response, but Respondent had submitted a courtesy copy, along with all other documents and filings related to the Motion.

her pleadings once Respondent supplies sworn facts warranting a decision in its favor. In addition, because Respondent's affidavits stand uncontradicted, the Commission must accept, as true, the facts contained therein. *Id* at 416. See *Supra, Cano* at 139 (if the party seeking summary judgment supplied facts *via* affidavit, which, when left uncontradicted, would warrant judgment in its favor as a matter of law, the opponent may not sit idly by and rely on his pleadings to create a genuine issue of factual issue); see also **Estate of Budis Andernovics, 197 Ill2d 500, 508 Fn. 2 (2001)** (allegations of a verified complaint do not constitute evidence, except by way of admission, and can be of no assistance in proving a plaintiff's case). In addition, the other documents that Complainant submitted with her response do not support that Respondent's articulated, nondiscriminatory reason for terminating Complainant is pretextual. Most of the additional documentation that Complainant submitted is irrelevant to this Motion before the Commission.

#### **Recommendation**

Based on the foregoing, there is no genuine issue of material fact. Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, I recommend that the Complaint be dismissed in its entirety, with prejudice.

**HUMAN RIGHTS COMMISSION**

**BY:\_\_\_\_\_**

**REVA S. BAUCH  
DEPUTY ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION**

**ENTERED: May 7, 2009**